

REMARKS/ARGUMENTS

This paper responds to the Office Action of November 4, 2003. The shortened statutory period is extended to run through May 4, 2004. Accordingly, this response is timely.

Claims 1-35 are now pending, a total of 35 claims. Claims 1, 6, 13 and 24 are independent. Claims 1-5 and 13-34 are allowed, and 7-12 are indicated as reciting allowable subject matter. Claim 35 is added to better protect the invention.

Applicant respectfully requests reconsideration of the application.

I. Status of the Application

Formal drawings, a Preliminary Amendment (including a Substitute Specification), and an Information Disclosure Statement and Forms 1449 were submitted December 15, 2000. Initialed copies of the Forms 1149 were received with appreciation, and thus it appears all of these papers were received by the PTO. However, the Preliminary Amendment and Formal Drawings are not acknowledged in the present Office Action.

- The Examiner is requested to confirm that the December 15, 2000 Preliminary Amendment (and its Substitute Specification) are entered.
- The Examiner is requested to confirm that formal drawings were received in or around December 2000.

II. Claim 6

The Office Action compares claim 6 to Tye '789, col. 15 line 30 to col. 16 line 53, and col. 50, lines 30-60. As discussed below, the Office Action's discussion of claim 6 is too incomplete to permit a direct response. Claim 6 recites as follows:

6. A method, comprising:
classifying control-flow instructions of a computer instruction set into a plurality of classes; and
during execution of a program on a computer, as part of the execution of instructions of the instruction set, updating a record of the class of the classified control-flow instruction most recently executed.

The Office Action draws on two unrelated portions of Tye '789, with no showing that the two portions of Tye '789 interrelate in the manner recited in the claim. Without some showing that all elements of the claim are in Tye '789, including the interrelationships, there is no anticipation rejection.

The Office Action reduces the underlined portions of claim 6 to an ellipsis, and thus does not indicate any part of Tye '789 that might correspond. The designated portions of Tye '789 do not teach or suggest the portions of the claim that were omitted from the Office Action. Tye '789 classifies instructions "into two general classes," but only gathers information about "the second class." Tye '789, col. 53, line 48. There is apparently no information collected about the first class. Thus, Tye's gathered information always makes it appear that the "second class" was most recently executed, never the first. This information cannot serve as "a record of the class of the classified control-flow instruction most recently executed."

Applicant submits that claim 6 is patentable over the art.

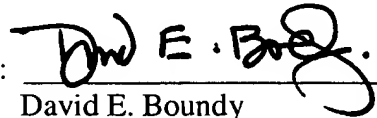
In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. Enclosed is Petition for Extension of Time for three months. In the event that any further extension of time is required, Applicant petitions

for that extension of time required to make this response timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 23-2405, Order No. 114596-04-4002.

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

Dated: May 3, 2004

By: 

David E. Boundy
Registration No. 36,461

WILLKIE FARR & GALLAGHER LLP
787 Seventh Ave.
New York, New York 10019
(212) 728-8000
(212) 728-8111 Fax